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Security Council

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Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

Note verbale dated 30 June 2011 from the Permanent Mission of Belgium to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Belgium to the United Nations has the honour to submit a national report to the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya (see annex).

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Annex to the note verbale dated 30 June 2011 from the Permanent Mission of Belgium to the United Nations addressed to the Chair of the Committee

National report by Belgium submitted to the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

1. United Nations resolutions

The sanctions applied by the international community (United Nations) on Libya are provided for in two legal instruments: Security Council resolutions 1970 (2011) of 26 February 2011 and 1973 (2011) of 17 March 2011. Both resolutions cover the following types of sanctions:

- Arms embargo (para. 9 of resolution 1970 (2011) and para. 16 of resolution 1973 (2011))
- Travel ban (para. 15 of resolution 1970 (2011))
- Asset freeze (para. 17 of resolution 1970 (2011) and paras. 19-21 of resolution 1973 (2011))
- Ban on flights (paras. 17 and 18 of resolution 1973 (2011))

2. European Union law (decisions and regulations)

Belgium, as a member of the European Union, implements the provisions of the Security Council resolutions that fall within the scope of competence of the European Union decisions and regulations. Some common elements of the national reports prepared by European Union member States were made available by the Council of the European Union on 23 June 2011.

In the case of Libya, the European Union adopted a set of decisions and a set of regulations implementing Security Council resolutions 1970 (2011) and 1973 (2011). The decisions and regulations have been amended several times to take into account amendments to the resolutions, changes to annexes, updates of lists etc.

The set of decisions rests on Council decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya. The arms embargo is covered by articles 1 and 2, the visa ban by article 5 and the asset freeze by article 6.

Council decision 2011/137/CFSP has been amended by Council decisions 2011/178/CFSP of 23 March 2011 and 2011/332/CFSP of 7 June 2011, as well as by Council implementing decisions 2011/156/CFSP of 10 March 2011, 2011/175/CFSP of 21 March 2011, 2011/236/CFSP of 12 April 2011, 2011/300/CFSP of 24 May 2011 and 2011/345/CFSP of 16 June 2011. The amendments concern articles 3 to 6 and 8, as well as the annexes, of Council decision 2011/137/CFSP.

The set of regulations rests on Council regulation 204/2011, which has been amended by Council regulations 296/2011 of 23 March 2011 and 572/2011 of 16 June 2011, as well as by Council implementing regulations 233/2011 of 10 March 2011, 272/2011 of 21 March 2011, 288/2011 of 23 March 2011, 360/2011 of 12 April 2011, 502/2011 of 23 May 2011 and 573/2011 of 16 June 2011.

Council regulation 539/2001 of 15 March 2001 (and its subsequent amendments) requires nationals of Libya to be in possession of a visa when entering the European Union/Schengen area.

These Council regulations are binding in their entirety and are directly applicable in all States members of the European Union.

3. Specific Belgian measures

Belgium is part of the military operation in Libya and has notified the Secretary-General of the United Nations and the Secretariat of the League of Arab States accordingly (notifications of 21 March 2011, in accordance with paras. 4 and 8 of Security Council resolution 1973 (2011)).

Belgium has taken the following operational and administrative measures to implement Security Council and European Union sanctions against Libya (control of weapons):

- Internal administrative guidelines are provided to customs officers instructing them that inspections of cargo should take place upon reasonable grounds
- All valid export or trans-shipment licences have been revoked

Belgium has provided for the asset freeze of all entities and individuals listed in resolutions 1970 (2011) and 1973 (2011). Besides, Belgium has transmitted to the Committee a request for exemption concerning asset freeze (para. 21 of resolution 1970 (2011)). The Committee acknowledged receipt of the request on 3 May 2011.

4. Failure to comply with European Union law: Belgian law provisions

Article 17 of Council regulation 204/2011 provides that member States lay down the penalties applicable to infringements of the provisions of that regulation. The penalties determined by Belgium are set out in the following legislation:

(a) General: the law of 13 May 2003 relating to the implementation of restrictive measures provided for in European Union regulations or decisions provides that violations of restrictive measures will be punished with a fine (of between €25 and €25,000) or a jail term (of between eight days and five years);

(b) Arms embargo: Belgian law provides that an export authorization is required for the sale, supply, transfer or export of arms and related material (this applies to all goods in the Common Military List of the European Union) to third countries; authorization for the provision of brokering services and other services related to military activities is also required. If the obligations are violated, the law of 5 August 1991 relating to the import, export and transit of and the fight against arms trafficking prohibits non-habilitated persons residing in Belgium from trading arms, provides that habilitated persons cannot perform any operation that could violate an embargo decided upon by an international organization of which Belgium is a member and provides that a request for a licence should be refused if it is not

compatible with the embargoes decided upon by the United Nations or the Organization for Security and Cooperation in Europe;[1]

(c) Visa ban: the visa ban applies above all in the context of the Schengen Convention, which allows residents of third countries to enter the Schengen area, of which Belgium is a part (article 5 (e) provides that the lists of persons of concern be transmitted to Belgian diplomatic and consular posts, which are under instruction not to grant visas). Moreover, the law of 15 December 1980 on access to the territory provides that a person who is not allowed into Belgian territory will be sent back;

(d) Asset freeze: the law of 11 January 1993 relating to the prevention of the use of the financial system for money-laundering or the financing of terrorism provides that financial and credit institutions must transmit any suspicion to the Belgian financial intelligence unit, which is the focal point for receiving and dealing with reports of suspect transactions. Article 34 provides that if the unit receives serious hints of money-laundering or other suspect activities, it must transmit the information to the Federal Prosecutor. Moreover, financial and credit institutions have to declare any activities they carry out with Libyan banks;

(e) Ban on flights: civilian flights are the concern of the Belgian Ministry of Mobility. There have been no flights between Belgium and Libya for a long time. Should there be any new flights between the two countries, the Ministry of Mobility, which is aware of the ban, would not authorize such flights. For VIP civilian flights, the Ministry of Foreign Affairs has the responsibility and it would not give authorization either. As to military flights, authorizations are requested from the Ministry of Defence through the Ministry of Foreign Affairs. The Ministry of Defence is aware of the ban and would not grant such an authorization.

[1] The law of 5 August 1991 sets out the following provisions: article 4 determines that a request for an export, import or trans-shipment licence should be refused if it is not compatible with the embargoes decided upon by any international organization of which Belgium is a member; articles 8 and 9 provide penal and administrative sanctions relating to breaches of the licensing obligations; article 10 prohibits Belgians or foreign nationals residing in Belgium to trade, export or supply arms, military material and related equipment and technology without an activity licence; article 11 determines that under the above-mentioned activity licences, no operations are permitted that could violate an embargo decided upon by any international organization of which Belgium is a member; and article 12 provides penal sanctions for breaches of articles 10 and 11.